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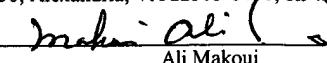
PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) APLE.P0040 (P3093US1)
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Signature <u>Makou Ali</u>		Filed 07/07/2003
Typed or printed name <u>Ali Makou</u>		First Named Inventor Adriana Dumitras
		Art Unit 2613
		Examiner Y. Young Lee
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.		
This request is being filed with a notice of appeal.		
The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.		
I am the <input type="checkbox"/> applicant/inventor. <u>Makou Ali</u> <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input type="checkbox"/> attorney or agent of record. Registration number <u>310-785-0140x302</u>		
<input checked="" type="checkbox"/> attorney or agent acting under 37 CFR 1.34. <u>04/11/06</u> Registration number if acting under 37 CFR 1.34 <u>45,536</u> Typed or printed name <u>Ali Makou</u> Telephone number <u>310-785-0140x302</u> Date <u>04/11/06</u>		
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.		
<input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.		

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.



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Ali Makoui

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application for:

Adriana Dumitras, et al.

Serial No.: 10/614,929

Filing Date: 07/07/2003

For: **METHOD AND APPARATUS
FOR IMPROVED CODING
MODE SELECTION**

Examiner: Y. Young Lee

Group Art Unit: 2613

REMARKS FOR REQUEST FOR PRE-APPEAL CONFERENCE

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

I. Rejection of Claims 1 and 3-6 Under §102(b) and Claim 2 Under §103(a)

In the Office Action, the Examiner rejected claims 1 and 3-6 under §102(b) as being anticipated by Wiegand. The Examiner also rejected claim 2 under 103(a) as being unpatentable over Wiegand in view of Yang. Claims 2-6 are dependent directly or indirectly on claim 1.

Applicants respectfully submit that Wiegand or any of the cited references do not disclose, teach, or even suggest the method of claim 1. The Examiner states that one of ordinary skill in the art would have no difficulty in recognizing that the outliers are the values that contribute to distortion and that by minimizing distortion, Wiegand discloses that such values are effectively reduced.

However, Applicants note that the Examiner has rejected claim 1 under 102(b). Therefore, the Examiner must show each limitation in the claimed invention is described in the cited reference. Accordingly, Applicants respectfully submit that the Examiner has not met his/her initial *prima facie* burden of proof under a 102(b) rejection. Moreover, it would not be appropriate for the Examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. *See* MPEP § 2144.03(A). Further, it is never appropriate to rely solely on "common knowledge" in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based. *Zurko*, 258 F.3d at 1385, 59 USPQ2d at 1697 ("[T]he Board cannot simply reach conclusions based on its own understanding or experience-or on its assessment of what would be basic knowledge or common sense. Rather, the Board must point to some concrete evidence in the record in support of these findings.").

Wiegand describes a method for selecting a Lagrange multiplier for a mode in a hybrid video coder control. Specifically, Wiegand describes a method that considers a quantization value and a Lagrange multiplier for a motion estimation to select a Lagrange multiplier for a mode. Wiegand describes computing a distortion value by determining the SSD of a current picture and a previous coded picture. *See* Wiegand, page 542, right column, lines 16-21. However, Wiegand does not describe computing a distortion value by using a function that reduces the effects of outliers. Further, absent evidentiary support in the record, it is erroneous for the Examiner to conclude that one of ordinary skill in the art would recognize that the outliers are the values that contribute to distortion, and that by minimizing distortion, Wiegand discloses that such values are effectively reduced.

Accordingly, Applicants respectfully submit that Wiegand does not render claim 1 unpatentable. As claims 2-6 are dependent directly or indirectly on claim 1, Applicants

respectfully submit that claims 2-6 are patentable over Wiegand for at least the same reasons that were discussed above for claim 1. In view of the foregoing, Applicants respectfully request reconsideration and withdrawal of the §102(b) rejection of claims 1 and 3-6, and the §103(a) rejection of claim 2.

II. Rejection of Claims 7-8, 10-12 under §102(b) and Claim 9 Under §103(a)

In the Office Action, the Examiner rejected claims 7-8 and 10-12 under §102(b) as being anticipated by Wiegand. The Examiner also rejected claim 9 under 103(a) as being unpatentable over Wiegand in view of Yang. Claims 8-12 are dependent directly or indirectly on claim 7.

Applicants respectfully submit that Wiegand or any of the cited references do not disclose, teach, or even suggest the method of claim 7. The Examiner cites that Wiegand illustrates the concept of multipliers varying at a slower rate than other multipliers for an encoding mode. However, Wiegand does not disclose, teach, or even suggest a varying reference Lagrangian multiplier encoding mode. Further, it does not disclose, teach, or even suggest a slow varying Lagrangian multiplier that varies at a slower rate than the varying reference Lagrangian multiplier for a reference encoding mode, as recited in claim 7.

Accordingly, Applicants respectfully submit that the Wiegand does not render claim 7 unpatentable. As claims 8-12 are dependent directly or indirectly on claim 7, Applicants respectfully submit that claims 8-12 are patentable over Wiegand for at least the same reasons that were discussed above for claim 7. In view of the foregoing, Applicants respectfully request reconsideration and withdrawal of the §102(b) rejection of claims 7 and 8-12, and the §103(a) rejection of claim 9.

III. Rejection of Claims 13-14 and 16-19 12 under §102(b) and Claim 15 Under §103(a)

In the Office Action, the Examiner rejected claims 13-14 and 16-19 under §102(b) as being anticipated by Wiegand. The Examiner also rejected claim 15 under 103(a) as being

unpatentable over Wiegand in view of Yang. Claims 14-19 are dependent on claim 13. Applicants respectfully submit that Wiegand or any of the cited references do not disclose, teach, or even suggest the method of claim 13. The Examiner states that Wiegand discloses the concept of such clusters of seven values in the determination of the best settings. Specifically, the Examiner states that Section 3 of Wiegand describes clustering Lagrangian values.

However, this section and its accompanying **Figure 1** merely illustrate seven different Lagrangian multipliers. Wiegand's several Lagrangian multipliers are not clustered Lagrangian values. Claim 13 recites a method that (1) computes a Lagrangian value for each encoding mode from several encoding modes, using a distortion value, a bit rate value, and a Lagrangian multiplier and (2) clusters the Lagrangian values. Thus, the method computes several Lagrangian values using a Lagrangian multiplier and clusters these Lagrangian values. Applicants respectfully submit that the Examiner has erroneously interpreted Wiegand's seven different Lagrangian multipliers to mean clustered Lagrangian values. Accordingly, Wiegand does not describe such a method.

Moreover, Wiegand does not describe a method that selects an encoding mode based on the Lagrangian values by selecting a mode 0 encoding method if the mode 0 encoding method is in a specific cluster, as recited in claim 13. Accordingly, Applicants respectfully submit that Wiegand does not render claim 13 unpatentable. As claims 14-19 are dependent on claim 13, Applicants respectfully submit that claims 14-19 are patentable over Wiegand for at least the same reasons that were discussed above for claim 13. In view of the foregoing, Applicants respectfully request reconsideration and withdrawal of the §102(b) rejection of claims 13-14 and 16-19, and the §103(a) rejection of claim 15.

CONCLUSION

In view of the foregoing, it is submitted that all the claims, namely claims 1-19, are in condition for allowance. Reconsideration of the rejections and objections is requested. Allowance is earnestly solicited at the earliest possible date.

Respectfully submitted,

STATTLER, JOHANSEN & ADELI LLP

Dated: 4/11/06

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